

IOWA DEPARTMENT OF EDUCATION

(Cite as 30 D.o.E. App. Dec. 067)

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| <i>In re: Athletic Eligibility of T.T.</i> |) | |
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| Michelle Teran, Appellant, |) | Case No. 21DOEAE2002 DE Admin. Doc. No. 5140 |
| |) | |
| v. |) | |
| |) | |
| Iowa Girls High School Athletic Union, Appellee. |) | DECISION |
| |) | |

STATEMENT OF THE CASE

This matter was heard via a videoconference hearing on June 22, 2021, by Rachel Morgan, designated administrative law judge with the Iowa Department of Inspections and Appeals, presiding on behalf of Dr. Ann Lebo, Director of the Iowa Department of Education (Department).

The appellant, Michelle Teran (Teran), was present, and testified. Attorney Brad Epperly represented the Iowa Girls High School Athletic Union (IGHSAU). Other witnesses who were present and provided testimony were Jean Berger, Executive Director for IGHSAU, D'Anne Kroemer, Board member for IGHSAU and Athletic Director at Pleasant Valley High School, and Craig Huegel, Athletics Director at Iowa City West.

An evidentiary hearing was held pursuant to departmental rules found at Iowa Administrative Code agency 281, chapter 6. Jurisdiction for this appeal is pursuant to Iowa Code section 280.13 and Iowa Administrative Code rule 281-36.17. The undersigned finds she and the director of the Department have jurisdiction over the parties and subject matter of this appeal.

The appellant seeks reversal of a decision that the IGHSAU (Board) made on May 26, 2021, finding that T.T., a student at Iowa City West, is ineligible to compete in varsity interscholastic athletics for ninety consecutive school days, under the provisions of the general transfer rule. *See* Iowa Admin. Code r. 281-36.15(3).

The following items were offered into evidence and admitted without objection:

- Letter from Craig Huegel to Dr. Lebo (Ex. A).
- May 26, 2021 Board Decision (Bd. Ex. at 2-3).

- Board Executive Session Minutes (Bd. Ex. at 4-5).
- Board Administrative Analysis (Bd. Ex. 6-12).
- T.T.'s School Records (Bd. Ex. 13-20).
- Documents regarding Teran Divorce Proceedings (Bd. Ex. 25-33).
- Law Enforcement Dispatch Records (Bd. Ex. 39-45).

FINDINGS OF FACT

T.T. attended Iowa City West during her high school sophomore year, the 2019-20 school year. T.T. had been a student in the Iowa City school district since third grade. (Teran Testimony; Bd. Ex. 6-12).

In approximately March 2020, Iowa City West transitioned to online learning due to the Covid-19 pandemic. T.T.'s mother, Teran, worked out of the home during the day and T.T. was home alone. In February 2020, the family began having problems with Teran's husband, T.T.'s step-father. The couple was estranged, but T.T.'s step-father repeatedly came to the family home and caused issues and stress on the family including, threatening T.T. when she refused to let him in the home, bringing random people to the home, and, at least once, appearing at the home impaired by drugs. Teran eventually filed for divorce from her husband and he only has supervised visits with his biological daughter, T.T.'s younger sister. However, Teran did not file for a protective or a non-contact order. Nevertheless, T.T. felt scared to be home alone during the day and slept with a golf club. (Teran Testimony; Bd. Exs. at 2-12).

In August 2020, Iowa City West decided that it would not hold school in person due to the pandemic. When Iowa City West no longer offered in person learning, Teran decided to transfer T.T. to Regina, which did offer in person classes. Teran did not feel comfortable leaving T.T. at home alone and wanted T.T. to be able to focus on school and not be scared that her step-father would appear at the home unexpectedly. Regina was the only school that offered in person classes at the beginning of the 2020-21 academic school. (Teran Testimony; Bd. Exs. at 2-12).

The Board requires students who transfer into a new school district to serve a ninety-school-day suspension before participating in varsity interscholastic athletic activities. Iowa Admin. Code r. 281-36.15(3). Student-athletes may play junior varsity games and may practice with varsity teams but may not play in varsity games during this suspension period. *Id.* When T.T. transferred to Regina, T.T. played junior varsity volleyball and basketball until her 90 day period of ineligibility was served. T.T. then played seven varsity basketball games at Regina in 2021. (Bd. Ex. at 13-20).

In mid-February 2021, Iowa City West offered in person learning again. T. T. immediately transferred back to Iowa City West, when Iowa City West offered in person learning again. (Teran Testimony; Bd. Exs. at 2-12).

In May 2021, T.T. wished to play varsity softball at Iowa City West. Teran was not aware that the 90 day eligibility rule would apply since T.T. was returning to her “home school.” (Teran Testimony). The Board conducted an administrative analysis and determined that T.T. was ineligible to participate in varsity sports. (Bd. Ex. at 6-12). Teran appealed that decision to the Board.

The Board held a hearing on May 22, 2021. (Bd. Exs. at 4-5). The Board had before it documents related to Teran’s ongoing divorce proceedings and difficulties related to T.T.’s step-father, including documents from two dispatches from the county sheriff department who was called to the family home on Feb. 4, 2020 and Feb. 5, 2020. At the hearing, three witnesses testified: T.T., Teran and Huegel. (Bd. Exs. 39-45).

The Board issued its ruling on May 26, 2021. (Bd. Ex. at 2). Among its findings were the following:

The IGHSAU accepts and recognizes that the family’s stated reason for in-person learning at Regina High School were in the best interest of [T.T.]. There are often many motivating factors for families who choose to change schools. That in and of itself is not an exception to the rule, particularly when athletic reasons are also involved. The importance of participating in varsity athletics was a key statement in the hearing and outlined the role that athletics places in this transfer. IGHSAU is not restricting [T.T.] from participating in extracurricular activities, but is following Iowa Code requiring a 90-day period from varsity athletic participation.

(Bd. Ex. at 2).

Teran appeals that decision.

CONCLUSIONS OF LAW

This appeal is brought pursuant to Iowa Administrative Code rule 281-36.17, which provides that if a claimant is “still dissatisfied” following a Board hearing, the claimant may make a written appeal to the director of education. *See* Iowa Admin. Code r. 281-36.17. The procedures for such a hearing are set forth in Iowa Administrative Code agency 281, chapter 6; that is, they are the general rules for Department appeals, “except that the decision of the director is final.” *Id.* “The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.” *Id.* r. 281-6.17(2).

Standard of Review

The standard of review here is for abuse of discretion. *In re A.T.*, 29 D.o.E. App. Dec. 241, at *1 (2019). *But see In re T.M.*, 29 D.o.E. App. Dec. 38, at *6–8 (2018). “An abuse of discretion occurs when the agency action ‘rests on grounds or reasons clearly untenable or unreasonable.’” *Dico, Inc. v. Emp’t Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998) (internal

citation omitted). “An abuse of discretion is synonymous with unreasonableness.” *Frank v. Iowa Dep’t of Transp.*, 386 N.W.2d 86, 87 (Iowa 1986). Unreasonableness means “action in the face of evidence as to which there is no room for difference of opinion among reasonable minds or not based on substantial evidence.” *Id.* Unreasonableness and abuse of discretion are “premised on lack of rationality, and focus[] on whether the agency has made a decision clearly against reason and evidence.” *Id.* “A failure to exercise discretion is an abuse of discretion.” *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 631 (Iowa 2000).

Discussion

The issue in this case is whether the Board abused its discretion in finding T.T. ineligible to play varsity sports without first serving a ninety-school-day suspension. The Board’s decision is governed by the general transfer rule.

The general transfer rule provides:

36.15(3) General transfer rule. A student who transfers from a school in another state or country or from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days, as defined in rule 281—12.1(256), exclusive of summer enrollment, unless one of the exceptions listed in paragraph 36.15(3) “a” applies. The period of ineligibility applies only to varsity level contests and competitions. (“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.) In ruling upon the eligibility of transfer students, the executive board shall consider the factors motivating student changes in residency. Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.

a. Exceptions. The executive officer or executive board shall consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten school days:

....

(9) In any transfer situation not provided for elsewhere in this chapter, the executive board shall exercise its administrative authority to make any eligibility ruling which it deems to be fair and reasonable. The executive board shall consider the motivating factors for the student transfer. The determination shall be made in writing with the reasons for the determination clearly delineated.

Iowa Admin. Code r. 281-36.15(3).

The application of this rule begins with determining whether a student is a transfer student. *Id.* If so, the student is ineligible to participate in varsity sports for ninety consecutive school days unless an exception applies. *Id.* The executive board “shall consider the motivating factors for the student transfer.” *Id.* The Board’s decision must be “fair and reasonable” and “shall be made in writing with the reasons for the determination clearly delineated.” *Id.*

Here, T.T. is a transfer student. Only the ninth, catch-all, exception was at issue before the Board and no evidence was presented to suggest another exception would apply. The question for this tribunal is whether the Board abused its discretion—that is, acted unreasonably—in denying T.T.’s request for an exception to the general transfer rule. Based on the rule’s requirements, the undersigned concludes the Board abused its discretion in denying the request.

The Board has a duty to make a “fair and reasonable” decision when the ninth, or catch-all, exception is implicated. When making its decision, the Board “shall consider the motivating factors for the student transfer.” The Board first reviewed T.T.’s decision to transfer to Regina. The Board stated that it “accepts and recognizes that the family’s stated reasons for in-person learning at Regina High School were in the best interest of [T.T.]”. (Bd. Ex. at 2). However, the Board found that the safety concerns expressed by Teran and T.T. did not outweigh the importance of participating in varsity sports for T.T. and, thus, athletics was a motivating factor in T.T.’s transfer. (Berger Testimony). This finding is not supported by the record.

In regards to T.T.’s transfer to Regina, the Board found that the safety concerns raised by the Teran family were merely concerns that many divorce couples face and therefore, did not place much weight on the safety issues presented by Teran and T.T. However, in making such finding, the Board focused primarily on the fact that Teran did not file for a protective order against her ex-husband and disregarded the following facts in the record: (1) law enforcement was called to intervene in domestic disputes on two occasions; (2) Teran filed for divorce and the ex-husband is only allowed *supervised* visits with his biological daughter, T.T.’s sister; (3) the trauma caused by the incidents with the ex-husband led T.T. to sleep with a golf club; (4) safety issues were so concerning that Teran decided that T.T. could not remain at Iowa City West, but needed to transfer to a new school, Regina, which offered in-person learning; and (5) T.T.’s statement to the Board that transferring to Regina was a difficult one and she had to leave her friends at Iowa City West. (Teran Testimony; Bd Ex. 4-12). The facts in the record demonstrate that safety concerns were very real and the primary, if not only, reason for the decision to transfer T.T. to Regina in the fall of 2020.

In regards to the second transfer, from Regina to Iowa City West, the Board, having decided that safety was not an adequate consideration, believed that T.T.’s motivating factor in returning to Iowa City West was due to athletics. However, T.T.’s statement before the Board discussed the fact that she felt scared at home alone, that moving to Regina was difficult due to having to leave her friends behind, and that she wanted to return to her friends at Iowa City West. The Board did not consider the fact that the safety issues had been resolved, *i.e.*,

she could attend school in person at Iowa City West again, and she wanted to return to the school district where her friends attended and that she had attended since third grade. (Berger Testimony; Bd. Ex. at 2).

The extenuating circumstances exception to the general transfer rule requires the Board to reach a "fair and reasonable" decision. Here, the record supports a finding that T.T.'s motivation to transfer to Iowa City West was due to a unique situation, i.e., the fact that a pandemic caused Iowa City West to offer only online classes, forcing T.T. to attend school at home where she did not feel safe, causing her to switch to an in-person school and once Iowa City West offered in person classes again, T.T. desired to transfer back to the Iowa City school district where she had attended since the third grade. It is precisely these type of situations, unique and not regularly occurring (such as a pandemic), that the extenuating circumstances exception to the general transfer rule allows the Board to consider. The Board's disregard of T.T.'s safety concerns and the failure of the Board to consider the fact that once T.T.'s safety concerns had been resolved she wanted to return to her home school, was an abuse of discretion.

Further, the Board maintains it wants to deter school jumping and recruitment. Here, it deters safety. The Board's decision in effect finds that students who leave a program for safety concerns cannot return to that program when the safety concerns are resolved, without being punished by sitting out ninety school days. This result is neither fair nor reasonable to students. In determining it was "fair and reasonable" to put T.T. in this unenviable position, the Board abused its discretion.

The Board's decision is reversed.

DECISION

For the foregoing reasons, the May 26, 2021 decision of the Iowa Girls' High School Athletic Union that T.T. is ineligible to compete in interscholastic athletic contests and competitions for ninety consecutive school days at Iowa West High School is **REVERSED**. There are no costs associated with this appeal to be assessed to either party.

Any allegation not specifically addressed in this decision is either incorporated into an allegation that is specifically addressed or is overruled. Any legal contention not specifically addressed is either addressed by implication in legal decision contained herein or is deemed to be without merit. Any matter considered a finding of fact that is more appropriately considered a conclusion of law shall be so considered. Any matter considered a conclusion of law that is more appropriately considered a finding of fact shall be so considered.

Dated this 23rd day of June, 2021.



Rachel D. Morgan

Administrative Law Judge

STATEMENT REGARDING ADMINISTRATIVE LAW JUDGE DECISION

I have reviewed this decision and adopt it as my own. While an individual fact might support the Union's decision, the administrative law judge is obligated to review the record as a whole, which she did. Considering the facts as a whole, I, like the administrative law judge, find and conclude that the "catch all" exception applies. The fear for this athlete's safety was tangible and justified. Granting relief under this record will strengthen the public policy to protect individuals from domestic abuse and will not weaken the public policy underlying the general transfer rule. For the reasons stated by Judge Morgan, the decision is REVERSED.



Ann Lebo, Ed.D.
Director, Iowa Department of Education

cc:

Brad Epperly, Attorney for IGHSAU, 700 Walnut Street #1600, Des Moines, IA 50309;
bcepperly@nyemaster.com (by mail and email)

Craig Huegel, Athletic Director West High School, 1725 N Dodge Street, Iowa City IA 52245;
huegel.craig@iowacityschools.org (by mail and email)

IGHSAU c/o Jean Berger and Jason Eslinger, 5000 Westown Parkway, West Des Moines, IA 50266; jean.berger@IGHSAU.org, jason.eslinger@IGHSAU.org (By mail and email).

Cheryl Smith, DOE (by email).